

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1.
 - a. Whether there should be additional reimbursement for date of service 05/24/01.
 - b. The request was received on 05/14/02.

II. EXHIBITS

1. Requestor:
 - a. Initial Submission of TWCC-60
 1. UB-92s
 2. EOB(s)
 - b. Additional documentation received on 06/27/02
 1. Position Statement
 2. Medical Records
 3. UB92s
 4. EOBs
 5. EOBs from other carriers
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
 - a. TWCC-60 and Response to a Request for Dispute Resolution
 - b. EOBs
 - c. UB92s
 - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 07/03/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 07/09/02. The response from the insurance carrier was received in the Division on 07/19/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: letter dated 06/25/02:
(Provider) charges...services at a fair and reasonable rate...these rates are based upon a comparison of charges to the Carriers and the amount of reimbursement received for same or similar services...this determination of fair and reasonable rate is based upon contractual agreements with the majority of Workers' Compensation Carriers and payments of 85% of 'usual and customary' charges made by other Workers' Compensation and Commercial insurance companies
2. Respondent: letter dated 05/02/02:
"...studies show that Medicare patients are of an equivalent standard of living to worker's compensation patients....The rate paid by the Respondent is that of 3-4 times the amount that would most likely be paid by Medicare....Medicare rates validate and reinforce the Respondents [sic] determination that payment made in the amount of \$1118.00 was more than appropriate under the Act...

IV. FINDINGS

1. Based on Commission Rule 133.307(d)(1&2), the only date of service eligible for review is 05/24/01.
2. Per the TWCC-60, the provider billed a total of \$8,375.98 on the date of service in dispute.
3. The carrier reimbursed a total of \$1,118.00, per the TWCC-60. The denial EOB is "M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID FAIR AND REASONABLE." The amount in dispute per the TWCC-60 is \$7,052.76.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Section 413.011(b) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Because there is no current fee guideline for ASCs, the Medical Review Division has to determine, based on the parties' submission of information, who has provided the more persuasive evidence. As the requestor, the health care provider has the burden to prove that the fees paid were not fair and reasonable. In this case, the provider submitted EOBs from other carriers that indicate those carriers paid varying percentages of the billed charges. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. The provider's documentation fails to justify or demonstrate that the fees requested are fair and reasonable. Therefore, no further reimbursement is recommended.

The above Findings and Decision are hereby issued this 15th day of August 2002.

Donna M. Myers, B.S.
Medical Dispute Resolution Officer
Medical Review Division

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